

Arthur B. Davis 201

1 A. I believe so.

2 Q. And so you knew that Sea

3 Star was looking at locations of

4 particular equipment and putting the

5 information into the computer system; is

6 that right?

7 A. No.

8 Q. What did you think that Sea

9 Star was doing?

10 A. I think that Sea Star was

11 providing tracking for gate-in and

12 gate-out information as it related to

13 specific pieces of equipment that they

14 were moving into and out of JAX and into

15 and out of Puerto Rico.

16 Q. And was there information

17 being provided with respect to equipment

18 that did not move in that April, May or

19 time through June 22nd?

20 A. As I said this was gate-in

21 and gate-out information that they were

22 putting into the computer system.

23 Q. As far as gate-in

24 information is concerned, how did you

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 202
1 determine what gate-in information

2 related to shipments in process?

4 and this afternoon, the equipment that

5 was in transit on board the vessels could

6 not be tracked because we, in fact, never

7 received the manifests.

7 received the manifests.

8 Q. As far as gate-out

9 information is concerned, how did you

10 determine what equipment was involved in

11 shipments in process?

12 A. I repeat the answer I just

13 gave you.

14 Q.

15 actual off-hire. What's the meaning of

16 that, sir?

17 A.

18 believe the piece of equipment was, in

15 *Journal of Oral Rehabilitation*

Q. And what is the basis of it?

21 your teacher.

22 A. It could be many things.

23 It could be a TIR that was signed. It

24 could be a sale. It could be the actual

2 It could have been on an inventory from
3 Sea Star and then sold. There are many,
4 many different things that would go into
5 this.

6 Q. And how would you determine
7 what the basis for your belief was, what
8 your belief was on the form that you
9 prepared?

10 A. That's what I just said

11 Q. Is the basis of your belief
12 specified in the comments section?

13 A. Yes. We have provided
14 comments.

15 Q. Is that the only basis for
16 your belief with respect to a particular
17 piece of equipment?

18 A. We would have to go back to
19 each individual sheet we provided on this
20 piece of paper, general information as it
21 related to a specific unit.

22 Q. All right. But here I am
23 looking at PRMC120000. It is not on your
24 page. It is on the page that I am

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 204
1 looking at.

2 And this says the columns
3 date on-hire, date off-hire, quote not on
4 self-billing unquote. What does that
5 mean?

8 Q. This indicates under
9 comments -- well, it says actual on-hire
10 42902 actual off-hire 101702.

11 Those are determinations
12 that you and Lorraine Robbins made; is
13 that correct?

14 A. That's correct.

15 Q. Under comments with respect
16 to this piece of equipment it states
17 quote capital G.I. capital SJ 5 / 3 / 02,
18 capital RRTD capital JAX, capital TIR
19 looks like 6894910 / 17 / 02, capital AR
20 4 / 29 / 02 - 9 / 2502, capital PD zero,
21 owes 149 days unquote. I correct that.

22 GISJ 5302 means gate-in San Juan on May 3
23 of 2002.

24 MR. MOLDOFF: Wouldn't

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 205
it be better if you showed him the
2 document.

3 MR. ARMSTRONG: I
4 would be happy to.

5 MR. MOLDOFF: Try to
6 answer the question.

7 BY MR. ARMSTRONG:

8 Q. Does gate-in San Juan 5302
9 mean that it was gate-in to the Sea Star
10 terminal in San Juan on May 3 of 2002?

11 A. What year are you talking
12 about?

13 Q. I just gave you the year.

14 A. Well, then we went through
15 a hole bunch of other things.

16 Q. It is the first thing, sir.

17 A. Okay, sir.

18 MR. MOLDOFF: I will
19 make a copy if it makes it easier.

20 MR. ARMSTRONG: No, it
21 is all right.

22 THE WITNESS: All
23 right. On the first unit under
24 comments we have GISJ 5302. Does

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 206
1 mean gate-in San Juan 5302?

2 Q. That means that it was
3 coming into the Sea Star terminal on May
4 3 of 2002; is that correct?

5 A. That's correct.

6 Q. What's the next event that
7 you show?

8 A. Returned to JAX with a TIR
9 on October 17 of 2002.

10 Q. And that was a time when
11 Sea Star was moving Emerald equipment to
12 JAX?

13 A. No.

14 MR. MOLDOFF

15 Objection.

16 Q. It wasn't?

17 A. Emerald equipment was being
18 moved to JAX, to everywhere else from the
19 very beginning of when Sea Star started
20 to handle the customer base of NPR,
21 Incorporated.

22 Q. All right.

23 You have a gate-in San
24 Juan?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 207

1 A. That is correct.

2 Q. May 3rd of 2002?

3 A. Yes.

4 Q. Your next event is return

5 to JAX; is that correct?

6 A. That's correct.

7 Q. You don't show a gate-out

8 San Juan, is that right?

9 A. That is right.

10 Q. So am I correct in

11 understanding that according to that

12 record that piece of equipment was

13 sitting in the terminal in San Juan from

14 May 3rd of 2002 through October 17 of

15 2002?

16 MR. MOLDOFF: Object

17 to the form of the question.

18 A. No.

19 Q. And why am I incorrect?

20 A. Because in October 17th

21 of --

22 First of all, I would need

23 to see the sheet to see if there were

24 other things on a particular piece of

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 208
1 paper.

2 Assuming for the moment
3 that there is not, this piece of
4 equipment was, in fact, returned to JAX.

10 In the event that -- go
11 ahead.

12 Q. Perhaps you did not
13 understand my question.

14 A. I thought what you asked
15 was --

16 Q. -- According to your
17 comments.

18 MR. MOLDOFF: Let him
19 finish.

20 A. Did this piece of
21 equipment sit in San Juan until the 17th
22 of October of 2002?

23 Q. According to your comment
24 that's what the record shows, does it

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 209

2 A. It does not.

3 Q. Where does the record show

4 that there was a gate-out San Juan

5 between May 3rd of 2002 and October 17th

6 of 2002?

7 A. I will answer you again.

8 If we had been in receipt of all of the

9 documentation that we were supposed to

10 receive then we would not have so many

11 problems with this.

12 We could have sit down and

13 worked all of these things out. We did

14 not receive it. This container or

15 chassis didn't fly to JAX. It was on a

16

17 Q. Yes, sir.

18 A. So it's could not have sat

19 in the terminal in San Juan until the

20 17th day of October. It went out of San

21 Juan prior to the 17th day of October.

22 Q. That's a good point.

23 A. And, in fact, then was in

24 use with Sea Star.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 210

1 Q. How was it in use by Sea

2 Star?

3 A. How was it not in use by

4 Sea Star? Sea Star didn't out of the

5 goodness of their heart decide to move a

6 piece of equipment from San Juan, a lone

7 chassis, back to JAX just to return it.

8 That didn't happen.

9 They used San Juan as a

10 dumping point for one ways wherever they

11 could.

12 Q. Do you have any

13 documentation on that, sir? Have you

14 produced all the documentation that you

15 have in that regard?

16 A. I believe we have.

17 MR. MOLDOFF: To make

18 the record clear, I think what Mr.

19 Davis said is Sea Star has not

20 produced the documents. We

21 requested the manifests which would

22 have that information.

23 MR. ARMSTRONG: I

24 won't bother to comment on that.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 211
1 There were 13,000 pages of
2 documents, more or less, produced
3 with respect to equipment movements
4 on board.

5 THE WITNESS: To
6 finish your line if I may and
7 pardon my interrupting.

8 MR. ARMSTRONG: Yes.

9 There's not a question pending.

10 THE WITNESS: I want
11 to finish this because let's finish
12 the rest of the line.

13 I have it as a TIR for unit
14 120000 coming into JAX on October
15 17th.

16 The rest of the information
17 came from Andy Rooks. That's on
18 that line. Or Andy Rooks said this
19 equipment was on-hire by Sea Star
20 Line 44902 through September 25th
21 of 2002, he paid zero and he owes
22 149 days.

23 BY MR. ARMSTRONG:

24 Q. Where does Andy Rooks show

Arthur B. Davis 212
that equipment was on-hire by Sea Star
Line?
A. It was on a group of papers
that we returned as part of the
information that was provided to us and
it was one page out of 66 total pages of
information provided to us by Andy Rook
when he started to review our invoices
and it was not on the self-billing
report. That's what the capital AR
references --

12 Q. -- Is that how you
13 determined that an unit is not on the
14 self-billing reports would be subject to
15 rent?

16 A. These were his comments

17 We used Sea Star information from their
18 own self-billing reports.

19 We used other information
20 such as TIRs, so Sea Star themselves
21 say -- Andy Rooks himself says I did not
22 have it on the self-billing reports. I
23 owe you 149 days. I returned it on the
24 September 25th, but guess what he didn't

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 213
1 He returned it on October 17th as
2 evidenced by a TIR issued in JAX number
3 68949.

4 Q. In that line that you are
5 reading there, where does it say that
6 Andy Rooks says that the --

7 A. -- That's AR.

8 Q. That's not actual rent?

9 A. Correct. That's Andy
10 Rooks.

11 Q. What's the meaning in your
12 forms of quote terminated and not
13 terminated unquote?

14 A. Some of the equipment was
15 in fact off-hired. Some of the equipment
16 was never off-hired.

17 Q. Is there equipment that is
18 still on-hire?

19 A. Not as far as I am
20 concerned.

21 Q. Why not?

22 A. Because the lease was
23 canceled.

24 Q. These schedules were

ESQUIRE DEPOSITION SERVICES

2 A. They were amended at
3 various times because we were reacting to
4 equipment that was being found as it was
5 being found.

6 Q. All right.

12 Do you recall that?

13 A. Say that again.

14 Q. You have produced some
15 amended schedules apparently dated
16 between May and August of 2004. Do you
17 recall that?

18 A. Sure.

19 Q. Have you prepared any other
20 amendments after August of 2004?

21 A. It is ongoing.

22 Q. What is ongoing?

23 A. Invoicing.

24 Q. So your schedules are not

3 A. We haven't really adjusted
4 too many.

5 Q. Which ones have you
6 adjusted?

7 A. We had adjusted, after we
8 received the documents under discovery,
9 we had adjusted for 16 days for a period
10 of May 16 through May 30th where the
11 original self-billing report that we
12 received and MBC Leasing received only
13 included certain payments, and
14 acknowledgement of certain units and not
15 all the units, but we were never in --
16 never did get the balance of the detail
17 of the self-billing reports.

18 So we went back to provide
19 the credit for the 16 days because they
20 paid for it, just wouldn't give us the
21 detail for it.

22 Q. Did you do anything else
23 that you recall?

24 A. I know that we have looked

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 216
2 at some of the Sea Star TIRs that were
3 provided and some of those TIRs show
4 gate-out which is an earlier date than
what we had.

5 So we will be adjusting the
6 bills accordingly and if the TIRs shows
7 that it goes the other way and it wasn't
8 taken back out again then we can give
9 credit where it is due.

10 Q. Did you find any
11 duplication of unit number
12 schedules?

13 A. I am not sure I understand
14 your question.

15 Q. Did you review the
16 schedules to determine whether there were
17 duplications with respect to the same
18 unit, that is you had listed the same
19 unit twice?

20 A. There are many instances
21 where the unit is listed twice, but it is
22 also listed twice because you had more
23 than one thing that happened.

24 It could have come into

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 217
Packer Avenue Marine Terminal and gone
back out. Come back in or gone back out
again or vice versa and then ended up in
JAX.

5 But the report is replete
6 with -- not on the self-billing report.

7 We show a gate-in to JAX
8 CSX Railroad from a third party and then
9 returned to JAX four months later with a
10 TIR not on the self-billing report, but
11 Andy says okay, I really think I owe you
12 June 25 to October 17th, I paid you zero
13 I owe you 114 days. In that case it was
14 the same dates , but the bills -- they
15 speak for themselves and that kind of
16 thing is over and over and over again.

17 Q. What do you mean when you
18 say over and over and over again?

19 A. Where it is not on the
20 self-billing report, but it went out of
21 Packer Avenue Marine Terminal and was
22 returned someplace with a TIR or it was
23 sold in Puerto Rico

24 Q. In terms of saying it went

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 218
1 out of Packer Avenue Marine Terminal, am

2 I correct in understanding that you could
3 not or did not determine whether it went
4 out as a shipment in process in late July
5 or early May?

6 A. If it did -- did you
7 determine? I couldn't determine for the
8 same reasons I have said before.

9 Q. All right.

10 Mr. Davis, on the DW

11 listings, have you amended those in the
12 last few months?

13 A. I don't believe so.

14 Q. How did you determine that
15 the units listed on these DV schedules
16 were units that were actually used by Sea
17 Star?

18 A. You would have to go back
19 to each individual unit to see.

20 Q. And did you go back to each
21 individual unit then to ascertain that
22 there was an equipment interchange
23 agreement showing delivery of that unit
24 to Sea Star?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 219

10 Q. And how did you tell from
11 the DV schedule that equipment you have
12 listed was not being paid by NPR as of
13 April 26th of 2002, but was missing or
14 POS as of that date?

15 A. Because there had to be
16 some basis upon which to start to bill it
17 in the first place.

18 Q. That's fine.

19 Now, tell me what the basis
20 for starting to bill equipment listed on
21 the DV schedule was when you prepared
22 those schedule?

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 220
the Sea Star self-billing reports. We
2 took gate-in and gate-out information.
3 We took TIR data. We took third party
4 information.

5 Q. What third party
6 information did you get?

7 A. From CSX, from CSX Rail,
8 from information provided at depots by
9 Sea Star Line, TIR gate-out, but it never
10 came back anywhere. If it never came
11 back anywhere then the unit wasn't
12 returned.

13 Q. Did you take third party
14 information from the Dominican Republic?

15 A. I did not receive any third
16 party information from the Dominican
17 republic to the best of my knowledge.

18 Q. Did you ask any third party
19 in the Dominican republic as to equipment
20 that they were holding?

21 A. I was not aware of them
22 holding equipment.

23 Q. You were not?

24 A. No.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 221
1 Q. All right.

5 A. If the equipment was, in
6 fact used by Sea Star it was Sea Star
7 Line's responsibility to return that
8 equipment no matter where it went.

9 Q. Are you saying this
10 afternoon that you have never been aware
11 that third parties in the Dominican
12 Republic have held Emerald equipment that
13 was leased by NPR, Incorporated for the
14 reason that NPR, Incorporated and Emerald
15 didn't pay their bills?

16 A. That Emerald didn't pay its
17 bills. Emerald didn't have bills to pay.

18 Q. That's probably the way it
19 was set up, but are you saying this
20 afternoon that you have never been aware
21 that parties in the Dominican Republic
22 have held Emerald equipment because of
23 NPR, Incorporated's failure to pay bills
24 such as bills for stevedoring or terminal

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 222
1 operations?

2 A. Teddy Hineson, I went to
3 the DV with Marty McDonald and met with
4 Teddy Hineson who said I think that I am
5 entitled to the NPR, Incorporated
6 equipment.

14 Q. You knew that there were
15 other vendors unquote that were holding
16 Emerald equipment in the Dominican
17 Republic, did you not?

18 A. That is the only one that
19 comes to mind. When we did an invoice to
20 Sea Star, if Sea Star Line used the piece
21 of equipment and didn't return the piece
22 of equipment Sea Star had to pay for the
23 piece of equipment.

24 Q. You invoiced Sea Star for

ESQUIRE DEPOSITION SERVICES

5 MR. MOLDOFF: Object

6 to the form of the question.

7 A. No.

8 Q. Let me show you a copy of a
9 letter dated --

10 A. -- because if Sea Star had
11 the piece of equipment and they used the
12 piece of equipment then it was up to Sea
13 Star to do whatever it was going to do
14 with the piece of equipment.

20 Again you did not provide
21 manifests for the Samone J. or The
22 Trader. You provide load summaries, not
23 the same, but your own load summaries
24 show hundreds and hundreds and hundreds

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 224
1 of pieces of equipment going to and from
2 the Dominican Republic as well as to
3 other island.

4 Your own e-mails talk about
5 the fact that there will be an abrupt
6 stop to the movement of equipment in the
7 Dominican Republic. We are going to
8 abruptly stop the service.

16 Q. Please try to concentrate
17 on the period April 26th, 27th of 2002.

18 You knew, did you not, that
19 as of April 26th, 27th of 2002 vendors in
20 the Dominican Republic were holding
21 Emerald equipment because of NPR,
22 Incorporated's failure to pay their
23 bills?

24 A. No.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 225

1 Q. No one told you that?

2 A. That is right.

3 Q. Okay. Let me show you a

4 copy a letter dated April 11 of 2002, I

5 ask the court reporter to mark as exhibit

6 33 for identification.

7 - - -

8 (Whereupon, Exhibit

9 Number 33 was marked for

10 identification.)

11 - - -

12 BY MR. ARMSTRONG:

13 Q.

14 letter?

15 A. I only recognize it from

16 when I was providing documents on the

17 document production request.

18 Q. Let me show you copies of
19 some e-mails that I will ask the court
20 reporter to mark as exhibit 34 for
21 identification.

22

23 (Whereupon, Exhibit

24 Number 34 was marked for

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 226
1 identification.)

2 - - -

3 BY MR. ARMSTRONG:

4 Q. Do you recognize those
5 documents?

6 A. Yes, I do.

7 Q. As of May 9th of 2002, were
8 you billing Sea Star Line for Emerald
9 Leasing equipment located at Illinois
10 Auto?

11 MR. MOLDOFF: While
12 he's looking at that I am going to
13 get this copied.

14 A. In regard to Illinois
15 Auto --

16 MR. MOLDOFF: Wait.

17 Wait. Wait until I come back.

18 - - -

19 (Whereupon, a short
20 recess was taken.)

21 - - -

22 THE WITNESS: In
23 regard to Illinois Auto, I believe
24 we started to bill on the May 8th.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 227

2 was holding equipment and refusing to
3 release it to Sea Star, did you not?

4 MR. MOLDOFF: Object
5 to the form of the question.

6 THE WITNESS: That's
7 not incorrect.

8 BY MR. ARMSTRONG:

9 Q. When did you begin billing
10 for equipment held at Fast Lane?

12 Q. When was that?

14 Q. Were you billing Sea Sta-

15 for equipment at Fast Lane on May 9 of
16 2002?

17 A. I don't know.

18 Q. When did you begin billing

19 Sea Star for equipment at Global

20 Intermodem?

21 A. Whenever it was taken out.

22 Q. Was that equipment taken
23 out before May 9th of 2002?

24 A. I don't know.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 228
1 Q. Were you billing Sea Star

2 for equipment located at Empire Truck
3 Lines on May 9 of 2002?

4 A. I don't know.

5 Q. Let me show you a copy of
6 an e-mail dated May 13th of 2002 which I
7 will ask the court reporter -- I'm
8 sorry -- a series of e-mails dated May
9 13th of 2002 that I will ask the court
10 reporter to mark as exhibit 35 for
11 identification.

12 - - -

13 (Whereupon, Exhibit
14 Number 35 was marked for
15 identification.)

16 - - -

17 BY MR. ARMSTRONG:
18 Q. Do you recognize those?
19 A. Yes, I do.
20 Q. Did you not know on May 13
21 of 2002 that Illinois Auto was still
22

24 *Quantitative Radiobiology*

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 229
1 discuss that with you?

2 A. I did not know.

3 Q. What was Lorraine's Robbins
4 position with respect to the Emerald
5 Equipment Leasing, what were her duties

6 MR. MOLDOFF: Asked
7 and answered.

8 A. She was working with me to
9 review all of the data and we started to
10 create invoices accordingly.

11 Q. Who is Jack Mohnacs
12 M-0-H-N-A-C-S?

13 A. He was inhouse counsel.

14 Q. Inhouse counsel for whom?

15 A. One of the old companies.

16 Q. Let me show you a copy of
17 an e-mail dated June 7th of 2002 that
18 will ask the court reporter to mark as
19 exhibit 36 for identification.

20 *—* *—* *—*

21 (Whereupon, Exhibit
22 Number 36 was marked for
23 identification.)

24

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 230
BY MR. ARMSTRONG:

2 Q. Do you recognize that
3 document?

4 A. Yes, I do.

5 Q. Do you recall whether you
6 removed the equipment from the vessel?

7 A. Yes, we did.

8 Q. Let me show you a copy of
9 an e-mail dated June 7th of 2002 that I
10 will ask the court reporter to mark as
11 exhibit 37 for identification.

12 - - -

13 (Whereupon, Exhibit
14 Number 37 was marked for
15 identification.)

16 - - -

17 BY MR. ARMSTRONG:

18 Q. D
19 document?

20 A. Only from when it was
21 produced

22 Q. Let me show you a copy of a
23 memo together with attachments that I
24 will ask the court reporter to mark as

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 231
1 exhibit 38 for identification.

2 — — —

3 (Whereupon, Exhibit
4 Number 38 was marked for
5 identification.)

6 - - -

7 BY MR. ARMSTRONG:

8 Q. Do you recognize those
9 documents?

10 A. Yes, I do.

11 Q. Whose signature is on the
12 first page?

13 A. Martin McDonald

14 Q. And what are the documents
15 comprising exhibit 38?

16 A. Are you asking me to tell
17 you what --

18 Q. -- To your knowledge what
19 are they?

20 A. It is a listing of stacks
21 of chassis that Marty signed for on July
22 10th of 2002.

23 Q. Did he discuss signing that
24 with you before he signed?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 232

1 A. I would think he did.

2 Q. Do you recall?

3 A. I think so so.

4 Q. Let me show did you a copy

5 of a memo together with an attached list

6 which I will ask the court reporter to

7 mark as exhibit 39 for identification.

8 - - -

9 (Whereupon, Exhibit

10 Number 39 was marked for

11 identification.)

12 - - -

13 BY MR. ARMSTRONG:

14 Q. Do you recognize those

15 documents?

16 A. Yes.

17 Q. Do you recognize the

18 signature on the first page?

19 A. Yes.

20 Q. Is that Martin McDonald?

21 A. It is.

22 Q. And what are these

23 documents?

24 A. This is a list of 45 foot

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 233
1 containers that he signed for.

2 Q. Let me show you a copy of a
3 memo together with attachment dated July
4 12 of 2002 which I will ask the court
5 reporter to mark as exhibit 40 for
6 identification.

7 — — —

8 (Whereupon, Exhibit
9 Number 40 was marked for
10 identification.)

11 — — —

12 BY MR. ARMSTRONG:

13 Q. Do you recognize those
14 documents?

15 A. Yes.

16 Q. What are those documents?

17 A. These are nine 45 foot

18 chassis that he signed for.

19 Q. Those were in inventory?

20 A. He signed for the receipt

21 of these nine pieces.

22 Q. Did he invite you?

23 the nine pieces were actually on the
24 premises before he signed for them?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 234

1 A. I would hope so.

2 Q. Are those pieces that you
3 were going to move to showroom?

4 A. I am not sure where these
5 would have gone.

6 Q. Let me show you a copy of a
7 memo together with attachment dated July
8 17th of 2002 that I will ask the court
9 reporter to mark as exhibit 41 for
10 identification.

11 - - -

12 (Whereupon, Exhibit
13 Number 41 was marked for
14 identification.)

15 - - -

16 BY MR. ARMSTRONG:

17 Q. Do you recognize those
18 documents?

19 A. Not particularly.

20 Q. Let's now show you a copy
21 of a letter dated July 18 of 2002
22 together with attachments that I will ask
23 the court reporter to mark as exhibit 42
24 for identification.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 235

1 — — —

2 (Whereupon, Exhibit

3 Number 42 was marked for

4 identification.)

5 - - -

6 BY MR. ARMSTRONG:

7 Q. Do you recognize the letter

8 and the attachments'

10 Q. Do you recall whether you

11 communicated with anyone at Sea Star Line

12 regarding the contents of the Hine

13 letters?

14 A. I don't recall.

15 Q. Let me show you a copy of

16 an e-mail together with attachments da

17 July 23rd of 2002 which I will ask the

18 court reporter to mark as exhibit 43 for

19 identification.

20 - - -

21 (Wh)

22 Number 43 was marked for

23 identification.)

24

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 236
1 BY MR. ARMSTRONG:

2 Q. Do do you recall receiving
3 that e-mail and the attachments?

4 A. I think so.

5 Q. And did you communicate
6 with anyone from Sea Star regarding that
7 e-mail?

8 A. I believe I did.

9 Q. With whom did you
10 communicate?

11 A. Andy Rooks.

12 Q. What was the substance of
13 your communication with Andy Rooks?

14 A. I believe that it would
15 have -- we would have talked about what
16 equipment was -- what or when the
17 equipment would have gone into any of
18 these terminals, these inland -- what do
19 you call them? Inland depots.

20 Q. Were you billing Sea Star
21 for that equipment?

22 A. I would have to go back to
23 each individual item in order to
24 determine that.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 237

1 Q. Let me show you a copy of

2 an e-mail dated August 9th of 2002 --

3 A. -- If I may, just to go

4 back into this for a second. I notice

5 one of the terminals, inland depots

6 that's listed on her is Worthy Cartage in

7 Cincinnati which is a Sea Star Line

8 depot.

9 Q. Let me show you a copy of

10 an e-mail dated August 9th of 2002 that I

11 will ask the court reporter to mark as

12 exhibit 44 for identification.

13 - - -

14 (Whereupon, Exhibit

15 Number 44 was marked for

16 identification.)

17 - - -

18 BY MR. ARMSTRONG:

19 Q. Do you recall receiving

20 that e-mail?

21 A. Yes, I do.

22 Q. After your receipt did you

23 take any action?

24 A. I did.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 238

1 Q. What action did you take?

2 A. I called the gentleman to
3 find out if he had the equipment.

4 Q. What did he say?

5 A. No.

6 Q. Were you billing Sea Star
7 for that equipment?

8 A. I would have to find out by
9 going to each individual unit.

10 Q. Let me show you a copy of
11 an e-mail dated August 12 of 2002 that I
12 will ask the court reporter to mark as
13 exhibit 45 for identification.

14 - - -

15 (Whereupon, Exhibit
16 Number 45 was marked for
17 identification.)

18 - - -

19 BY MR. ARMSTRONG:

20 Q. Do you recall receiving
21 that e-mail?

22 A. I remember this.

23 Q. After receiving the e-mail
24 did you take any action?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 239

1 A. I did.

2 Q. What action did you take?

3 A. I was in contact with the

4 rail yard about the chassis.

5 Q. Were you billing Sea Star

6 for that chassis?

7 A. I would have to go back to

8 the billing.

9 Q. Let me show you a copy of

10 an e-mail dated October 4 of 2002 that I

11 will ask the court reporter to mark as

12 exhibit 46 for identification.

13 - - -

14 (Whereupon, Exhibit

15 Number 46 was marked for

16 identification.)

17 - - -

18 BY MR. ARMSTRONG:

19 Q. Do you recall receiving

20 that e-mail?

21 A. I do.

22 Q. After after you received

23 that e-mail what action did you take?

24 A. I contacted Mr. Adams at

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 240
1 Sarah Lee.

2 Q. Were you billing Sea Star
3 for that unit or those units?

6 Q. Did you recover those
7 units?

8 A. I would have to go back to
9 the individual units

10 Q. Let me show you a copy of
11 two e-mails dated October 10 of 2002
12 which I will ask the court reporter to
13 mark as exhibit 47 for identification.

14

15 (Whereupon, Exhibit
16 Number 47 was marked for
17 identification.)

18

19 BY MR. ARMSTRONG:

30 O Do you r

21 documents?

23 Q. Were you aware that Global
24 in Memphis was holding equipment?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 241
1 A. I don't recall at this

2 time.

3 Q. After you received the
4 e-mail from Lisa Florence, do you recall
5 taking any action?

6 A. I don't remember.

7 Q. Were you billing Sea Star
8 for the equipment?

9 A. I would have to go back to
10 each individual unit.

11 Q. Let me show you a copy of
12 an e-mail or two e-mails dated November
13 1st of 2002 that I will ask the court
14 reporter to mark as exhibit 48 for
15 identification.

16 - - -

17 (Whereupon, Exhibit
18 Number 48 was marked for
19 identification.)

20 - - -

21 BY MR. ARMSTRONG:
22 Q. Do you recognize that? Do

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 242

1 Q. Do you recall what the --

2 whether the problem was resolved?

3 A. No, I don't.

4 Q. Do you recall what action
5 you took?

6 A. I don't.

7 Q. Let me show you a copy of
8 an e-mail dated December 16 of 2002. It
9 is together with other e-mails that I
10 will ask the court reporter to mark as
11 exhibit 49 for identification.

12 - - -

13 (Whereupon, Exhibit
14 Number 49 was marked for
15 identification.)

16 - - -

17 BY MR. ARMSTRONG:

18 Q. Do you recognize those
19 documents.

20 A. Yes, I do.

21 Q. All right.

22 MR. MOLDOFF: Off the
23 record.

24 - - -

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 243

2 discussion was held off the
3 record.)

4

5 BY MR. ARMSTRONG:

6 Q. Do you recognize that
7 document exhibit 49?

8 A. I do.

9 Q. You say in part quote I
10 want to move some equipment back to JAX.

What's the cost to your pier in JAX?

12 Did you receive a cost from
13 Mr. Rooks?

14 A. I don't remember if I
15 received it from Mr. Rooks or Mr. Bates.

16 Q. Did you move the equipment
17 back to JAX?

18 A. We did.

19 Q. Where w-

20 located before you moved it to JAX?

21 A. In San Juan.

22 Ω Where in Sa

23 A Inside the port -- ins

24 the terminal that Sea Star had

ESQUIRE DEPOSITIONS

Arthur B. Davis 244

1 Q. Did you charge Sea Star per
2 diem for that equipment through the time
3 that it arrived in JAX?

4 A. I would have to look at
5 each individual piece of equipment.

6 Q. You say quote can we leave
7 the chains on the stacked chassis and
8 return them to you in JAX unquote. What
9 does that mean?

10 A. I am not quite sure I see
11 where you are reading.

12 Evidently the chassis had
13 already been stacked and there were
14 chains on them and I asked if as opposed
15 to taking off the chains and putting
16 chains back on could we just leave the
17 chains that was already on on the
18 equipment until it was in JAX.

19 Q. And what was the response?

20 A. I don't remember.

21 Q. Did you take chains off,
22 the chains off in JAX?

23 A. I believe that the chains
24 were returned by Alex Garcia of the AGA

ESQUIRE DEPOSITION SERVICES

3 Q. Moved the chassis from
4 where to where?

5 A. From San Juan back to the
6 states.

7 Q. Sea Star did not move the
8 chassis from San Juan back to the
9 continental United States?

10 A. I believe they did, but I
11 believe the company that actually paid
12 for the freight, if my recollection is
13 correct, was AGA Group.

14 Q. Let me show you a copy of a
15 handwritten document that I will ask the
16 court reporter to mark as exhibit 50 for
17 identification.

18 — — —

19 (Whereupon, Exhibit

20 Number 50 was marked for
21 identification.)

22 - - -

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 246
1 document?

2 A. I did.

3 Q. Did you send it to

4 Lorraine?

5 A. I did.

6 Q. What did you mean when you

7 said quote we both know he will love that

8 part unquote?

9 A. What I meant very simply is

10 so many pieces of equipment were found to

11 be missing from the self-billing report

12 and at that point we had just been

13 putting bill after bill after bill in.

14 Q. Let me show you a copy

15 an e-mail or series of e-mails which I

16 will ask the court reporter to mark as

17 exhibit 51 for identification.

18 - - -

19 (Whereupon, Exhib

20 Number 51 was

21 identification

22 - - -

23 BY MR. ARMSTRONG:

24 Q. Do you recognize those

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 247

2 A. Yes.

3 Q. March 5th of 2003, second

4 paragraph you state quote on a separate
5 issue what are your thoughts in regard to
6 the chains and binders unquote.

10 A. Are you talking about the
11 previous exhibit?

12 Q. Yes, sir, but I believe
13 that it is December 16 of 2002, exhibit
14 49?

15 A. No.

16 Q. So these were more chains?

17 A. That is right.

18 Q. And did you reach a

19 settlement with respect to these chains
20 and binders?

21 A. I don't believe so.

22 Q. Have you ever paid for the
23 chains and binders?

24 A. No.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 248

1 Q. Has Emerald ever paid for

2 the chains and the binders?

3 A. Not to my knowledge.

4 Q. Why not?

5 A. I don't believe we agree on

6 what was missing and what was provided in

7 the first place.

8 Q. Where are the stacks to

9 which the chains and binders were affixed

10 now?

11 A. They could be anywhere,

12 sold, could be any place.

13 Q. Did you tell sell them with

14 the chains and the binders on them?

15 A. No.

16 Q. Did you take the chains and

17 binders off before you sold them?

18 A. Certainly.

19 Q. What did you do with the

20 chains and the binders after you took

21 them off?

22 A. They were put into

23 containers.

24 Q. And where are those

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 249

2 A. Probably sold.

3 Q. You sold the containers,

4 but were the chains and the binders in
5 them?

6 A. No.

7 Q. What did you do with the
8 chains and the binders when you sold the
9 containers?

10 A. The containers were sold
11 after the chains and the binders we
12 removed.

13 Q. What did you do with the
14 chains and binders when you removed them
15 from the containers?

16 A. Gave them to Sea Star.

17 Q. You gave these chains and
18 binders back to Sea Star?

19 A. That is right.

20 Q. When did you do that?

21 A. I am really not sure.

22 Q. Do you have any receipts
23 for that?

24 A. Yes.

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 250
1 Q. Where are those receipts

2 located?

3 A. Right at this second I
4 don't know.

5 Q. Let me show you a copy of
6 an e-mail dated March 6th of 2003 that I
7 will ask the court reporter to mark as
8 exhibit 52 for identification.

9 - - -

10 (Whereupon, Exhibit

11 Number 52 was marked for
12 identification.)

13 - - -

14 BY MR. ARMSTRONG:

15 Q. Do you recognize that
16 document?

17 A. Yes, I do.

18 Q. Is that a true and correct
19 copy of an e-mail that you received

20 A. I think so.

21 Q. Let me show you a copy of
22 an e-mail dated March 19 of 2003 that
23 will ask the court reporter to mark as
24 exhibit 53 for identification.

Arthur B. Davis

251

1

2 (Whereupon, Exhibit

3 Number 53 was marked for
4 identification.)

5

6 BY MR. ARMSTRONG:

7 Q. Do you recognize that
8 document?

9 A. I think I recognize this.

10 Q. And toward the bottom of
11 the page there's a reference to
12 approximately 800 chains and binders. Do
13 you see that?

14 A. I do.

15 Q. What happened to those?

16 A. I couldn't say. At this
17 time I don't know.

18 Q. Let me show you a copy of a
19 letter dated July 9th of 2003 that I will
20 ask the court reporter to mark as exhibit
21 54 for identification.

22

23 (Whereupon, Exhibit
24 Number 54 was marked for

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 252
1 identification.)

2 — — —

3 BY MR. ARMSTRONG:

4 Q. Do you recognize that

5 letter?

6 A. Yes, I do.

7 Q. Did you receive the

8 original of that letter?

9 A. I think so.

10 Q. Let me show you a copy of a

11 document which I will ask the court

12 reporter to mark as exhibit 55 for

13 identification.

14

15 (Whereupon, Exhibit

16 Number 55 was marked for

17 identification.)

18 - - -

19 BY MR. ARMSTRONG:

20 Q. Do you recognize that

21 document?

22 A. I think so.

23 Q. Do you know

24 it?

Arthur B. Davis 253

2 by Lorraine and I.

3 Q. Let me show you a copy of a
4 letter dated August 28 of 2003 which I
5 ask the court reporter to mark as exhibit
6 56 for identification.

7 — — —

8 (Whereupon, Exhibit

9 Number 56 was marked for

10 identification.)

11 - - -

12 BY MR. ARMSTRONG:

13 Q. Do you recall receivin

14 that letter, sir?

15 A. Yes, I remember receiving

16 this.

17 Q. Let me show you a copy o

18 an e-mail dated November 26 of 2003 that

19 I will ask the court reporter to mark as

20 exhibit 57 for identification.

21 - - -

22 (Whereupon, Exhibit

23 Number 57 wa

24 identification.)

Arthur B. Davis 254

1

2 BY MR. ARMSTRONG:

3 Q. Do you recall receiving
4 that e-mail?

5 A. Yes, I do.

6 Q. Do you know whether you
7 continued to charge rent for any of these
8 reefer containers or the chassis through
9 the date they were delivered to JAX?

10 A. Again I would have to go
11 back to each individual unit.

12 Q. Do you know where those
13 particular units were located?

14 A. When?

15 Q. The ones you wanted shipped
16 to JAX?

17 A. They were inside the Sea
18 Star terminal in San Juan.

19 Q. Let me show you a copy of
20 an e-mail dated December 10 of 2003 that
21 I will ask the court reporter to mark as
22 exhibit 58 for identification.

23

24 (Whereupon, Exhibit

ESQUIRE DEPOSITION SERVICES

3 - - -
4 BY MR. ARMSTRONG:

4 BY MR. ARMSTRONG:

5 Q. Do you recall that
6 document?

6 document?

7 A. I think so.
8 Q. Is that draw and correct
9 copy of an e-mail that you sent?

10 A. I believe so.

11 Q. Were the chassis or reefers
12 and chassis carried by Sea Star from San
13 Juan for JAX?

14 A. I believe so.

15 Q. Let me show you a copy of a
16 handwritten document dated January 14 of
17 2004 that I will ask the court reporter
18 to mark as exhibit 59.

19 - - -

20 (Whereupon, Exhibit

21 Number 59 was marked for
22 identification.)

23 - - -

24 BY MR. ARMSTRONG:

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 256

1 Q. Is that draw a true and
2 correct copy of a document that you
3 wrote?

4 A. It is.

5 Q. Let me show you a copy of
6 an e-mail dated -- two e-mails one dated
7 February 19 of 2004 the other February 21
8 of 2004 that I will ask the court
9 reporter to mark as exhibit 60 for
10 identification.

11 - - -

12 (Whereupon, Exhibit
13 Number 60 was marked for
14 identification.)

15 - - -

16 BY MR. ARMSTRONG:

17 Q. Do you recall those
18 e-mails?

19 A. I believe I remember this.

20 Q. What action did you take
21 with respect to that equipment?

22 A. I don't recall.

23 Q. Let me show you a series of
24 e-mails which I will ask the court

ESQUIRE DEPOSITION SERVICES

4 (Whereupon, Exhibit
5 Number 61 was marked for
6 identification.)

8 BY MR. ARMSTRONG.

9 Q. Do you recall those
10 e-mails?

11 A. I do recall this.

12 Q. All right.

15 A. I believe this was brought
16 back into the JAX yard.

17 Q. Let me show you a copy of a
18 handwritten document dated May 11th of
19 2004 and I will ask the court reporter to
20 mark as exhibit 63 for -- I'm sorry --
21 exhibit 62 for identification.

23 (Whereupon, Exhibit
24 Number 62 was marked for

Arthur B. Davis 258
identification.)

2 — — —

3 Q. Is that a true and correct
4 copy of a letter that you wrote?

5 A. Yes.

6 Q. And what was your purpose
7 in writing that letter?

8 A. To make sure -- just what
9 it says that equipment should be released
10 if I did not send an e-mail or a fax.

11 Q. Where was that equipment
12 located?

13 A. It was located in Puerto
14 Rico report at the Sea Star Line
15 terminal.

16 Q. Was this equipment in
17 storage at the Sea Star terminal?

18 A. It may have been.

19 Q. Who is Arturo?

20 A. As far as I understand he's
21 the terminal manager.

22 Q. Whose terminal manager?

23 A. Sea Star Line.

24 Q. Who is Manuel?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 259

2 understanding he gets involved with the
3 equipment.

4 Q. For whom did he work?

5 A. Sea Star Line.

6 Q. Am I correct that you were

7 instructing Sea Star Line employees not
8 to release any Emerald equipment from t
9 Sea Star terminal in May of 2004?

10 A. That is correct.

11 Q. Let me show you a copy of
12 an e-mail dated August 11th of 2004 that
13 I will ask the court reporter to mark as
14 exhibit 63 for identification.

15 - - -

16 (Whereupon, Exhibit

17 Number 63 was marked for

18 identification.)

19 - - -

20 BY MR. ARMSTRONG:

21 Q. Do you recognize that
22 document?

23

24 (Whereupon, a short

ESQUIRE DEPOSITION SERVICES

2 - - -

3 Q. Let me show you a copy of
4 an e-mail dated August 11th of 2004 which
5 I had asked the court reporter to mark as
6 exhibit 63 for identification.

7 Did you write and send that
8 he e-mail?

9 A. Yes.

10 Q. Let me show you an e-mail
11 dated August 19 of 2004 which I will ask
12 the court reporter to mark as exhibit 64
13 for identification.

14 *Journal of Health Politics, Policy and Law*

15 (Whereupon, Exhibit
16 Number 64 was marked for
17 identification.)

18 — — —

19 BY MR. ARMSTRONG:
20 Q. Did you write and send that
21 e-mail?

22 A. What?

23 Q. Did you write and send that
24 e-mail?

ESQUIRE DEPOSITION SERVICES

Arthur B. Davis 261

1 A. I did.

2 Q. In that e-mail you list
3 various units, do you not?

4 A. Yes, I do.

5 Q. Were those units on rent to
6 Sea Star?

7 A. I would have to look at
8 each individual unit.

9 Q. You don't know as of August
10 19th of 2004 whether those were on rent?

11 A. If they were physically on
12 rent as of August 19th?

13 Q. Right.

14 A. No. They would not have
15 been on rent.

16 Q. Were they in storage at Sea
17 Star?

18 A. They were physically there
19 at the terminal in San Juan.

20 Q. Were you paying storage
21 charges for those units?

22 A. I wasn't paying storage
23 charges.

24 Q. Has Emerald ever paid

ESQUIRE DEPOSITION SERVICES

1 Arthur B. Davis 262
storage charges for units at Sea Star

2 Line's terminal in San Juan?

3 A. Emerald itself, no.

4 Q. Let me show you a copy of
5 an apparent draft letter dated January
6 20th of 2004 that I will ask the court
7 reporter to mark as exhibit 65 for
8 identification.

9

10 (Whereupon, Exhibit
11 Number 65 was marked for
12 identification.)

13

14 BY MR. ARMSTRONG:

15 Q. Have you ever seen that
16 document before?

17 A. I don't recall this and it
18 doesn't seem to necessarily make any
19 sense because it is talking about the
20 Bankruptcy Court Chapter 11 debtors and
21 Sea Star picking up assets and it's from
22 January of 2004. I don't know.

23 Q. It was produced by Emerald
24 Equipment Leasing, do you know where

ESQUIRE DEPOSITION SERVICES

3 A. I don't know. I don't
4 recall. I don't know.

5 Q. You have never seen it
6 before?

7 A. I don't recall it.

8 Q. All right.

11 A. No.

12 Q. You have the right to read
13 and sign this deposition before it is
14 filed and I believe that your counsel has
15 already exercised that right on your
16 behalf so we don't have to go through the
17 rest of the options.

18 Thank you.

19 MR. MOLDOFF: I have
20 no questions.

21

22 (Whereupon, the

23 deposition concluded at 5:50 p.m.)

24

ESQUIRE DEPOSITION SERVICES

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1 C E R T I F I C A T E

2 I hereby certify that the
3 witness was duly sworn by me and that the
4 deposition is a true record of the
5 testimony given by the witness;

6

7

8

9 Joseph Calavetta, R.P.R.

10 12-15-04

11

12

13 (The foregoing certification of this
14 transcript does not apply to any
15 reproduction of the same by any means,
16 unless under the direct control and/or
17 supervision of the certifying shorthand
18 reporter.)

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ESQUIRE DEPOSITION SERVICES

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1 INSTRUCTIONS TO WITNESS

2 Please read your deposition over
3 carefully and make any necessary changes.
4 You should assign a reason in the
5 appropriate column on the errata sheet
6 for any change made.

7 After making any change which has
8 been noted on the following errata sheet,
9 along with the reason for any change,
10 sign your name to the errata sheet and
11 date it.

12 You are signing it subject to the
13 changes you have made on the errata
14 sheet, which will be attached to the
15 deposition. You must sign in the space
16 provided.

17 Return the original errata sheet to
18 the deposing attorney within thirty (30)
19 days of receipt of the transcript by you.

20

21

22

23

24

ESQUIRE DEPOSITION SERVICES

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1 ACKNOWLEDGMENT OF DEPONENT

2 I, _____, do hereby
3 certify that I have read the foregoing
4 pages, _____ and that the same is a
5 correct transcription of the answers
6 given by me to the questions therein
7 propounded, except for the corrections or
8 changes in form or substance, if any,
9 noted in the attached Errata Sheet.

10

11 _____

12 DATE

13

14 Subscribed and sworn to before me this

15 _____ day of _____,
16 200____.

17 My commision expires: _____

18

19 _____

20

21 Notary Public

22

23

24

ESQUIRE DEPOSITION SERVICES

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1

ERRATA

3

4 PAGE LINE CHANGE

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ESQUIRE DEPOSITION SERVICES

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1 LAWYER'S NOTES

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ESQUIRE DEPOSITION SERVICES